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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/730,210
Filing Date: December 08, 2003
Appellant(s): RICHEL SOPH ET AL.

Glenn M. Massina

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 14, 2009 appealing from the Office action mailed October 7, 2008.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: 1-8, 10, 13-17, 21 and 61 are pending, with claims 13 and 14 withdrawn. Claims 9, 11-12, 22-60, and 62-66 have been cancelled.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office

action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

| | | |
|------------------|------------------------|----------------|
| 6,139,550 | Michelson | 10-2000 |
| 6,602,255 | Campbell et al. | 8-2003 |
| 5,057,111 | Park | 10-1991 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

It is noted that appellant intends to address the provisional double patenting rejection at a later time. Until that time, the rejection will stand as follows.

Claims 1-8, 10, 15-17, 21 and 61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22, 26-33, 35, 36, 42, 54 and 55 of copending Application No. 10/401,997. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference lies in the fact that the copending application recites functionally

that the screw retaining means is for use with a bone plate. Therefore, it would have been obvious to one having ordinary skill in the art to have provided a bone plate for the screw retaining means. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US Patent 6,138,550).

Michelson discloses (**Figures 1-97D**) a device comprising:
a base plate (**Figures 1-8, 28 and 33**) having an aperture (**14 and 8 together; 12 and 6 together; or 408 and 402 together**) defining a through opening; a screw retaining means (**20**) rotatable about a center axis; the center axis extends through the through opening; the screw retaining means having an eccentric internal (towards the center) hole (**22, 412**) with substantially a ring thereabout; when the screw retaining means (**20**) rotates, the eccentric hole rotates between a concentric and eccentric position relative to the through opening (due to the through opening defining multiple centers) which receive screws (**30**); the aperture is aligned along the longitudinal axis as well as being at an acute angle (**0 degrees**) relative to it; and the retaining mechanism being a washer/disk/clip/ring and is flush with the upper surface of the plate. The retaining

mechanism is located in a radially and outwardly recessed groove in the wall of the aperture.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Campbell et al (US Patent 6,602,255).

Michelson discloses all of the claimed limitations except for a c-shaped retaining mechanism to be collapsible for insertion into the groove of the aperture.

Campbell et al teach the use of a collapsible c-ring for quick insertion while still preventing screw back out. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design a C-shaped ring with protrusions **414** to allow for quick insertion (removing the need to first properly align the retaining mechanism relative to opening **402**) and then allowing one to merely rotate the protrusions **414** to block the screw. This would either hasten surgical time or allow for quick manufacture by including the retaining mechanism initially without the need for time-consuming alignment.

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Park (US Patent 5,057,111).

Michelson discloses all of the claimed limitations except for an insert means engaged within said at least one hole for accommodating the bone screw. Park teaches **(Figure 5; Column 2, Lines 20-25; Column 3, Line 29 through Column 4, Line 69)** an insert member **(30)** which prevents stress-shielding. Stress-shielding is a negative effect due to an implant carrying the majority of the load and the bone weakening. It would have been obvious to one of ordinary skill in the art at the time of invention to provide for an insert member as taught by Park to the device of Michelson in order to prevent the implant from stress-shielding the bone.

(10) Response to Argument

In response to the appellant's arguments regarding independent Claims 1 and 21, Michelson does teach each and every limitation of the claimed invention. Appellant argues that the cutouts are not internal openings having a ring at least substantially thereabout. The cutouts can be considered internal openings because the appellant fails to claim what the openings are *internal to*. The cutouts are within the perimeter of the countersunk region (14) of the bone plate of Michelson, in addition to being within the outer perimeter of the retaining mechanism. Additionally, as claimed, the ring does not have to be part of the retaining mechanism. The walls of the countersunk region (14) of Michelson can be interpreted as a ring about the retaining mechanism and the elements therein. In response to the argument that the cutouts do not extend 180 degrees, the internal openings are not claimed to extend 180 degrees.

Regarding Claim 61, the 103 rejection does not modify the teaching of Park, but merely uses the teaching of Park to modify the disclosed invention as per Michelson. It is unclear from the appellant's arguments how Park is teaching away from the invention as claimed by Michelson. In addition, because the screw retaining mechanism overlies the top of the screw head in Michelson, it would not interfere with the insert member as taught by Park.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/CHRISTINE L. NELSON/

Examiner, Art Unit 3775

Conferees:

/Thomas C. Barrett/

Supervisory Patent Examiner, Art Unit 3775

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